

**CONSERVATION EASEMENT
TO PRESERVE OPEN SPACE LANDS**

THIS CONSERVATION EASEMENT TO PRESERVE OPEN SPACE LANDS (this "*Easement Agreement*") is by and between LUMBERMEN'S INVESTMENT CORPORATION, a Delaware corporation ("*Owner*"), and CITY OF SAN ANTONIO, a municipal corporation situated primarily in Bexar County, Texas ("*City*"), and shall be effective as of the Effective Date (herein defined).

RECITALS

A. Owner is sole owner in fee simple of that certain real property in Bexar County, Texas, comprised of three (3) tracts more particularly described in **Exhibit A** attached hereto and incorporated herein for all purposes (the "*Open Space Property*").

B. The Open Space Property possesses natural, scenic, open space and surface water and groundwater quality values of great importance to City, Owner and the people of the State of Texas.

C. The specific conservation values of the Open Space Property are further documented in the Baseline Inventory (herein defined).

D. Owner and City have the common purpose of conserving and preserving the conservation values of the Open Space Property in perpetuity, and the State of Texas has authorized the creation of Conservation Easements pursuant to Chapter 183 of the Texas Natural Resources Code, TEX. NAT. RES. CODE. ANN. §§ 183.01, *et. seq.*, and Owner and City wish to avail themselves of the provisions of that law.

E. Owner intends that the conservation values of the Open Space Property be preserved and maintained by limiting the uses of the Open Space Property to those Permitted Uses which are defined and described in this Easement Agreement.

F. City is a municipal corporation established under and through the laws of the State of Texas, that is empowered to hold interests in real property and is entitled to be a holder of conservation easements under Chapter 183 of the Texas Natural Resources Code.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Texas, including (but not limited to) Chapter 183 of the Texas Natural Resources Code, Owner hereby voluntarily GRANTS, TRANSFERS, ASSIGNS AND CONVEYS, to City a conservation easement in perpetuity over all of the Open Space Property attributed to Owner and described on **Exhibit "A"**, such easement to be of the nature and character, and to the extent, hereinafter set forth (such conservation easement granted hereby being referred to herein as the "*Easement*").

TO HAVE AND TO HOLD the Easement unto City in perpetuity, together with all and singular the appurtenances and privileges belonging or any way pertaining thereto, either at law

or in equity, for the use and benefit of City, its successors and assigns, forever, and Owner does hereby bind itself, its successors, and assigns to WARRANT and DEFEND the Easement granted and conveyed hereby to City against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through, or under Owner, but not otherwise.

Article I. Definitions.

For purposes hereof, the following terms shall be defined as set forth in this Section 1:

- A. ***“Baseline Inventory”*** means the documentation described in Exhibit B, which accurately describes the characteristics of the Open Space Property, its current uses and state (which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this grant).
- A. ***“Declaration”*** means the Declaration of Restrictive Covenants made by Owner, as Declarant, covering the Land and recorded in the Official Records.
- A. ***“Development Agreement”*** means that certain Development Agreement among City, Owner and Cibolo Canyon Conservation and Improvement District No. 1.
- A. ***“Development Property”*** means the Land less and except the Open Space Property.
- A. ***“District”*** means Cibolo Canyon Conservation and Improvement District No. 1.
- A. ***“Easement”*** means the conservation easement created and granted to City under the terms of this Easement Agreement.
- A. ***“Easement Purposes”*** means (i) protection of natural habitat of wildlife, plants and ecosystems, (ii) preservation of open space for the scenic enjoyment of the general public and to maintain groundwater and surface water quality, and (iii) preservation of land areas for public education and passive outdoor recreation not inconsistent with the terms of this Easement.
- A. ***“Effective Date”*** means the later date on which this Easement Agreement has been signed by each of the undersigned parties, as evidenced by the later acknowledgment date noted below.
- A. ***“Golf Course/Open Space Tracts”*** means the three tracts of land comprising a total of six hundred eighty (680) acres, more or less, identified in the Declaration as the Golf Course/Open Space Tracts.
- A. ***“Impervious Cover”*** means any impermeable construction covering the natural land surface, including, without implied limitation, pavement, roads, parking areas, buildings,

pools, patios, sheds, driveways and sidewalks.

- A. **"Land"** means 2,852.4 acres of land, more or less, as described in Exhibit "C", comprised of the Development Property and the Open Space Property.
- A. **"Landowner"** means the Owner and each subsequent owner of a portion of the Open Space Property.
- A. **"Mitigation"** means as defined in 40 CFR §1508.20.
- A. **"Official Records"** means the Official Records of Real Property of Bexar County, Texas.
- A. **"Open Space Property"** means those tracts or parcels of land described in **Exhibit A** attached hereto, comprising a total of approximately 1,100 acres, more or less.
- A. **"Parcel"** shall mean a parcel of land out of the Open Space Property.
- A. **"Permitted Uses"** means those uses described in Article III of this Easement Agreement.

Article II. Easement Purpose.

The purpose of this Easement is (i) to assure that the Open Space Property will be retained FOREVER predominantly in its natural, scenic and open space condition, (ii) to protect native plants, animals and plant communities on the Open Space Property, (iii) to preserve open space for the scenic enjoyment, education and passive outdoor recreation of the general public, (iv) to maintain groundwater and surface water quality, and (v) to prevent any use of the Open Space Property that will impair or interfere with the conservation values of the Open Space Property or will impair or undermine any Easement Purposes. Owner intends to and shall rely solely upon City in effecting the purpose of this Easement and agrees that this Easement will restrict the use of the Open Space Property to only the Permitted Uses.

Article III. Permitted Uses.

When approved by City, in the exercise of its sole discretion, the following uses and activities on the Open Space Property are permitted:

- A. Natural habitat parks with indigenous wildlife, plants and ecosystems;
- A. Recreational uses, including nature trails, which preserve the conservation values of the Open Space Property, including (without implied limitation) any pavilions, parking lot(s), public restrooms, signage, storage facilities and related amenities approved by City's Parks and Recreation Department, in the exercise of its sole discretion;
- B. Drainage control facilities;

- A. Measures to control invasive species of plant and animal life detrimental to the conservation values of the Open Space Property;
- A. Construction of minimal roadways for ingress and egress for fire, emergency medical and police services;
- A. Removal of diseased or non-native trees, shrubs or plants;
- A. Firebreaks;
- A. Measures to monitor plant and wildlife populations, plant communities and natural habitats on the Open Space Property;
- A. Construction of perimeter fences and cross-fences as necessary to protect the Open Space Property; and
- A. Adjoining landowners' non-exclusive use of existing unpaved, internal ranch roads presently located on the Open Space Property, solely for purposes of ingress and egress to and from the tracts of land adjacent to the Open Space Property and described in **Exhibit "D"** and a public road, subject to such terms and conditions as City may impose from time to time, in the exercise of City's discretion.

Article IV. Prohibited Uses.

Owner and City shall not perform, nor knowingly allow others to perform, any act on or affecting the Open Space Property that is inconsistent with the Easement Purposes. Any activity on or use or development of the Open Space Property inconsistent with the terms of this Easement Agreement is prohibited. Without limiting the generality of the foregoing, the following activities, development and uses are expressly prohibited, except to the extent undertaken by City in connection with any Permitted Use:

- A. Impervious Cover. There shall be no placement or construction of Impervious Cover on any portion of the Open Space Property.
- B. Subdivision. The Open Space Property may not be divided, subdivided or partitioned.
- A. Construction. No construction shall be allowed on the Open Space Property.
- A. Prohibited Drilling or Mining. No drilling, surface mining or other extraction of minerals by surface or subsurface methods may occur on any part of the Open Space Property. No wells may be drilled to extract groundwater except in connection with any portion of the Open Space Property used for purposes of parkland.
- A. Agricultural Use. The Open Space Property may not be used for commercial agricultural purposes of any kind.

- A. Excavation. No excavating, removal of topsoil, sand, gravel, rock, or other materials or changes in the topography of the Open Space Property will be allowed.
- A. Disturbance of Vegetation. No removal, harvesting, destruction or cutting of native trees, plants or shrubs will be allowed. No planting of non-native trees, plants or shrubs will be allowed. No dumping or storage of any waste or other substances may be placed on the Open Space Property, including any deposits caused by erosion or siltation from adjacent property. No activities will be permitted which, in the determination of City, are detrimental to wildlife habitat preservation.
- A. Hydrology. There shall be no alteration or depletion of or extraction from any water bodies on or under the Open Space Property, including groundwater.
- A. Biocides and Pesticides. There shall be no use of insecticides, fungicides, rodenticides, herbicides or other biocides or pesticides.
- A. Drainage. No activities will be permitted that are determined by City to be detrimental to drainage, flood control or soil conservation.
- A. Discretionary Consent. If, owing to unforeseen or changed circumstances, any of the uses prohibited in this Easement Agreement are deemed desirable by both City and Owner, City may, in its sole discretion, give permission for such activities, subject to the limitation that neither City nor Owner has any right or power to agree to any activities that would result in the termination of this Easement Agreement in any manner except as expressly provided in this Easement Agreement.

Article V. Rights of City.

To accomplish the purposes of this Easement Agreement, the following rights and related easements are conveyed to City by Owner with respect to the Open Space Property, which rights shall be in addition to all other rights which City may have at law or in equity. The grant of such rights shall not imply or create an obligation or duty on the part of City to act or exercise such rights. City may exercise any one or more of the following rights in its sole discretion.

- A. Enforcement. To preserve and protect the conservation values of the Open Space Property by limiting the uses of the Open Space Property as provided in this Easement Agreement and to prevent any activity on or use of the Open Space Property that is inconsistent with the Easement Purposes;
- A. Entry. To enter upon any portion of the Open Space Property, by and through its authorized employees and agents, at all times to monitor compliance with and otherwise enforce the terms of this Easement Agreement and to manage and control the Open Space Property;

- A. Exclude Access. To exclude and remove all persons, including (without limitation) Owner (except to the extent necessary to perform Owner's obligations under this Easement Agreement), from all or any part of the Open Space Property;
- A. Restoration. To restore or to require the restoration of such areas or features of any portion of the Open Space Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in this Easement Agreement; and
- A. Ancillary Easement Rights. To undertake any Permitted Uses and in connection therewith, to use, improve, occupy and enjoy the Open Space Property, and, together with all members of the public, to have an exclusive and perpetual easement and right of way for access to and from the Open Space Property for such Permitted Uses, including without limitation the construction, improvement, operation and maintenance of any improvements authorized as Permitted Uses, with full and free right and liberty for the City, in common with all members of the public, to pass and re-pass along and over the Open Space Property for Permitted Uses upon such terms, conditions and limitations as City, in the exercise of its sole discretion, may deem reasonably necessary for the preservation of the conservation values, including the right of the City to temporarily close or restrict access to the Open Space Property for all uses, including without limitation, the Permitted Uses.

Article VI. Rights of Owner.

- A. Mitigation. If Owner's development of the Development Land results in the imposition of Mitigation by applicable governmental authority(ies), the only Mitigation requirements which may be imposed on the Open Space Property are (A) this Conservation Easement, and (B) with respect to Tract No. ____ of the Open Space Property only [Carabetta], any additional Mitigation requirements as may be imposed by such applicable governmental authority(ies).
- A. Enforcement. To preserve and protect the conservation values of the Open Space Property, Owner may (but shall have no duty to) prevent any activity or use of the Open Space Property that is inconsistent with the Easement Purpose.

Article VII. Representations and Warranties.

Owner represents and warrants that, as of the Effective Date (except as noted below), to the best of Owner's knowledge and belief:

- A. No Environmental Harm. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated,

treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Open Space Property during Owner's ownership of the Open Space Property.

- A. No Underground Storage Tanks. There are no underground storage tanks located on the Open Space Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Open Space Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements.
- A. Compliance. Owner and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Open Space Property and its use.
- A. No Litigation. As of the date on which Owner has executed this Easement Agreement, no civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation or requirement applicable to the Open Space Property or its use, nor do there exist any facts or circumstances that Owner might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.
- A. No Encumbrances. The Open Space Property is not security for any voluntary mortgage, deed of trust, contractual lien or other charge or indebtedness and is not subject to any involuntary lien or charge (other than lien for the payment of ad valorem taxes not yet due and payable).

Article VIII. Owner's Continuing Obligations.

Owner shall continue to undertake, perform and pay the following obligations:

- A. Taxes. Owner shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Open Space Property by competent authority, including any such taxes imposed upon, or incurred as a result of, this Easement Agreement, and shall furnish City with satisfactory evidence of payment of all taxes, assessments, fees and charges upon request.
- A. Upkeep and Maintenance. Owner shall be solely responsible for the maintenance, protection and upkeep of the Open Space Property, except such improvements as may be placed or constructed on the Open Space Property by City in connection with a Permitted Use.
- A. Liability. _____ Owner shall have no liability for claims which may arise from use of the Easement by City or City's permittees and invitees, including (without limitation) claims of bodily injury (including death) and personal property, if not caused by the act or omission of Owner. Owner shall maintain comprehensive general liability insurance

coverage of not less than \$1,000,000 per single occurrence and \$2,000,000 general aggregate, naming City as an additional insured. The policies of insurance required from Owner shall be obtained from and maintained with an insurance company rated at least "A-X" by Best's and authorized or permitted to issue such insurance in the State of Texas. Such insurance shall contain a provision that coverage will not be canceled or not renewed until at least thirty (30) days' prior written notice has been given to City. Certificates of insurance showing required coverage to be in force shall be filed with City on or before the Effective Date.

Article IX. City's Remedies.

- A. To Require Action by Owner. If City becomes aware that a violation by Owner of the terms of this Easement Agreement has occurred or is threatened, City may notify Owner of such violation and request corrective action sufficient to prevent or abate such violation and, as necessary, to restore the affected portion of the Open Space Property to its previous condition prior to the violation. Failure by Owner to abate its violation and take such other corrective action as may be required to cure the violation within thirty (30) days after the giving of such notice, or such longer period of time as may be reasonably necessary to cure the violation in question so long as the cure is commenced within said thirty (30) day period and prosecuted until completion with all reasonable diligence no later than sixty (60) days from the date of such notice, shall entitle City to exercise its remedies as hereinafter forth.
- A. Enforcement by City. Notwithstanding the preceding **Section A**, City is entitled to exercise any one or more of the following remedies if a violation of the terms of this Easement Agreement by Owner has occurred or is threatened:
1. bring an action at law or in equity to enforce the terms of this Easement Agreement, including seeking a temporary restraining order, temporary injunction and/or permanent injunction to enjoin the noncompliance;
 2. bring an action to require the restoration of the Open Space Property to its previous condition;
 2. bring an action for specific enforcement of this Easement Agreement; and/or
 2. recover any damages arising from the noncompliance, which, except for the Excluded Claims (as defined below) for which no limitation shall apply, shall be limited to the reasonable costs of enforcement of the purposes of this Easement Agreement, including (without limitation), costs of land surface restoration, court costs and reasonable attorneys' fees; for purposes hereof, "**Excluded Claims**" shall mean any and all claims which City may have against Owner of the affected Open Space Property, or any of its successors or assigns, as a result of any alleged

breach of the warranty of title set forth in this Easement Agreement.

With respect to all the litigation remedies described in this **Section B**, City's rights under this Easement Agreement apply equally in the event of either actual or threatened violations of the terms of this Easement Agreement. Owner agrees that the City's remedies at law with respect to an alleged violation of this Easement Agreement are inadequate, and that City shall be entitled to injunctive relief, both prohibitive and mandatory, in addition to such other relief to which City may be entitled, including specific performance of the terms of this Easement Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

A. Scope of Remedies. City's remedies described herein shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity or pursuant to the Development Agreement, subject to the limitations on damages set forth in **Section B** above.

A. Failure to Act or Delay. No covenant, term, condition or restriction of this Easement Agreement or the breach thereof by a Landowner will be deemed waived, except by written consent of City, and any waiver of the breach of any such covenant, term, condition or restriction will not be deemed or construed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, condition or restriction. City shall retain the right to take any action as may be necessary to ensure compliance with this Easement Agreement notwithstanding any prior failure to act. No delay or omission by City in the exercise of any right or remedy upon any breach by any Landowner shall impair such right or remedy or be construed as a waiver.

A. Emergency Enforcement. If City, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate a violation of the terms of this Easement Agreement causing or which will cause immediate and irreparable harm to the Open Space Property, City may pursue its remedies under this Article IX without prior notice to Owner or without waiting for the period provided for cure to expire.

A. Waiver of Certain Defenses. Owner hereby waives any defense of laches, estoppel, or prescription.

Article X. Condemnation

If all or any part of the Open Space Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement Agreement and the Easement, in whole or in part, City shall be entitled to seek recovery from the condemning authority for the full value of the portion of the Open Space Property subject to the taking and all direct or incidental damages resulting therefrom. All compensation awarded for any taking (or the proceeds of any sale in lieu thereof) of any portion of the Open Space Property shall be the property of City.

Article XI. Amendment and Termination

- A. Amendment of Easement. This Easement may be amended only with the written consent of City and Owner. Any such amendment shall be consistent with the Easement Purposes and shall comply with Section 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with such statute. Any such amendment must also be consistent with Chapter 183 of the Texas Natural Resources Code, or any regulations promulgated pursuant to that law. City and Owner have no right or power to agree to any amendment that would affect the enforceability of this Easement Agreement.
- B. Minor Corrections to Description of Open Space Property. Portions of the Open Space Property share a common boundary with portions of the Golf Course/Open Space Tracts. At such time as the legal descriptions of the golf courses identified as Tract One and Tract Two in the Declaration may be modified or revised, as provided in the Declaration, the legal description of the Open Space Property shall be likewise modified to reflect the revisions to the common boundary of the Open Space Property and the Golf Course/Open Space Tracts. In such event, Owner shall file an amendment to this Easement Agreement amending the legal description of the Open Space Tract as set forth in **Exhibit "A"** and such amended legal description will replace the legal description set forth in the **Exhibit "A"** attached hereto as of the Effective Date. Such amendment may be made without the approval of City if:
2. The corrected descriptions do not reduce the total acreage of the Open Space Property by more than a total of five (5) acres; and
 2. The amendment filed by Owner shall contain a representation that such corrected descriptions do not reduce the total acreage of the Open Space Property by more than a total of five (5) acres.
- A. Termination. This Easement Agreement and the Easement hereby created and conveyed to City will terminate in all respects on the date on which the Development Agreement shall terminate, if such termination has occurred prior to the Hotel Completion Date, as defined in the Development Agreement. Such termination shall be evidenced by the affidavit of Owner, recorded in the Official Records, that the Development Agreement has terminated according to its terms prior to the Hotel Completion Date, as defined in the Development Agreement, and which identifies the date on which the Development Agreement was so terminated.

Article XII. Assignment.

City may not transfer its rights under this Easement Agreement without the prior written consent of Owner, which consent will not be unreasonably withheld.

Article XIII. Subsequent Transfers.

Owner agrees (1) that the terms, conditions, restrictions, and purposes of this Easement Agreement or reference thereto will be binding upon all subsequent owners of all or any part of the Open Space Property; and (2) to incorporate the terms of this Easement Agreement by reference in any deed or other legal instrument by which such Owner is divested of any interest in all or any part of the Open Space Property, including, without limitation, a leasehold interest. Owner shall notify City in writing at least thirty (30) days prior to any transfer of the Open Space Property or any interest therein or part thereof. The failure of Owner to perform any act required by this paragraph shall not impair the validity of this Easement Agreement or limit its enforceability in any way.

Article XIV. Notices.

Any notice, communication, request, reply or advice (severally and collectively referred to as "Notice") in this Easement Agreement provided or permitted to be given, made or accepted by any party to the other(s) must be in writing. Notice shall, unless otherwise provided herein, be given or served (1) by depositing the same in the United States mail, postage paid, certified mail, and addressed to the party to be notified at the last address for which the sender has at the time of mailing, with return receipt requested, or (2) by delivering the same to such party. Notice to a Landowner deposited in the mail in the manner hereinabove described shall be effective from and after such deposit. Notice given to a Landowner in any other manner and notice to City shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as provided below, be as follows:

City: City of San Antonio
100 Military Plaza, 1st Floor
San Antonio, Texas 78207
Attention: Director of Development Services

With copies to: City Clerk
100 Military Plaza, 2nd Floor
San Antonio, Texas 78207

City Attorney
100 Military Plaza, 3rd Floor
San Antonio, Texas 78207

Owner: Lumbermen's Investment Corporation
5495 Beltline Road, Suite 225
Dallas, Texas 75240
Attention: President

With a copy to: Lumbermen's Investment Corporation
1300 S. MoPac Expressway

Austin, Texas 78746
Attention: General Counsel

Article XV. Recordation.

City shall record this Easement Agreement in the Official Records, and may re-record it at any time or from time-to-time. Owner shall record any amendment of this Easement Agreement authorized under the terms of this Easement Agreement.

Article XVI. INDEMNIFICATION

OWNER COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AND THE ELECTED OFFICIALS, MEMBERS, AGENTS, EMPLOYEES, OFFICERS DIRECTORS AND REPRESENTATIVES OF CITY, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO OWNER'S ACTIVITIES UNDER THIS EASEMENT AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF OWNER, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, OWNER'S EMPLOYEE OR PERSONNEL, CONSULTANT, CONTRACTOR OR SUBCONTRACTOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, PERSONNEL, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS EASEMENT AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF CITY. OWNER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY OR OWNER KNOWN TO OWNER RELATED TO OR ARISING OUT OF OWNER'S ACTIVITIES RELATED TO THIS EASEMENT AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT OWNER'S EXPENSE. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING OWNER OF ANY OF ITS OBLIGATIONS UNDER THIS SECTION.

Article XVII. General Provisions.

- A. Controlling Law. The interpretation and performance of this Easement Agreement shall be governed by the laws of the State of Texas.
- A. Liberal Construction. Any general rule of construction to the contrary notwithstanding,

this Easement Agreement shall be liberally construed in favor of the grant to effect the purpose of this Easement Agreement and the policy and purpose of Texas Natural Resources Code Chapter 183. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.

- A. Severability. If any provision of this Easement Agreement, or the application of this Easement Agreement to any person or circumstance or portion of the Open Space Property, is found to be invalid, the remainder of the provisions of this Easement Agreement, or the application of this Easement Agreement to persons or circumstances or portion of the Open Space Property other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- A. Entire Agreement. This instrument (including each document attached hereto or referenced herein, which are incorporated herein) sets forth the entire agreement of the parties with respect to the Easement and the other matters set forth herein and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement and the other matters set forth herein, all of which are merged herein.
- A. Successors and Assigns. The covenants, terms, conditions, and restrictions of this Easement Agreement shall be binding upon, and inure to the benefit of, Owner and its successors and assigns and shall continue as a servitude running in perpetuity with the Open Space Property. The term "Owner," and any pronouns used in place thereof, shall include, respectively, the above-named Owner and its successors and assigns. This Easement Agreement shall be binding on and shall inure to the benefit of City, and any governmental entity which may succeed to the powers and duties of City.
- A. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- A. Amendment. Any Landowner and City may amend this Agreement as to such Landowner's Parcel or Parcels without the joinder of any other Landowner provided such amendment shall be in compliance with the requirements of Article XI and shall not (1) be contrary to or conflict with the purposes of this Easement Agreement, (2) result in a termination of this Easement Agreement or the Easement, or (3) affect in any way the qualifications of the Easement or the status of City under any applicable laws. Such amendment must be in writing, signed by such Landowner and City and recorded in the Official Records.
- A. Counterpart Execution. This Easement Agreement may be executed in multiple counterparts which shall be construed together as a single original instrument as though all parties had signed one instrument, and, when executed, each counterpart shall be

binding upon and inure to the benefit of each of the parties executing the instrument whether or not all other parties have executed same.

- I. Venue. It is expressly agreed that the exclusive venue for any litigation arising under or related to the Easement or this Easement Agreement is the State District Courts of Bexar County, Texas.
- J. Exhibits. All exhibits and other documents attached to or referred to in this Easement Agreement are incorporated herein by reference for the purposes set forth in this Easement Agreement.

Dated as of the Effective Date.

EXHIBITS TO EASEMENT AGREEMENT:

- EXHIBIT A - OPEN SPACE PROPERTY DESCRIPTION
EXHIBIT B - BASELINE INVENTORY FOR CONSERVATION VALUES
EXHIBIT C - DESCRIPTION OF LAND (2,854.4 acres, more or less)
EXHIBIT D - DESCRIPTION OF ADJOINING TRACTS

[SIGNATURES APPEAR ON FOLLOWING PAGE]

CITY:

CITY OF SAN ANTONIO, a Texas municipal
corporation

By: _____

Name: _____

Title: _____

Date:

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

OWNER:

LUMBERMEN'S INVESTMENT
CORPORATION, INC., a Delaware corporation

By: _____

Name: _____

Title: _____

Date:

EXECUTION PAGE FOR CONSERVATION EASEMENT TO PRESERVE OPEN SPACE LAND

ACKNOWLEDGMENTS

THE STATE OF TEXAS §

COUNTY OF _____ §

Before me, the undersigned authority, this instrument was acknowledged on the ____ day of _____, 2002, by _____, _____ of _____, a Delaware corporation, on behalf of said corporation.

[SEAL]

NOTARY PUBLIC, STATE OF TEXAS

My Commission Expires:

THE STATE OF TEXAS §

COUNTY OF _____ §

Before me, the undersigned authority, this instrument was acknowledged on the ____ day of _____, 2002, by _____, _____ of CITY OF SAN ANTONIO, a municipal corporation, on behalf of said municipal corporation.

[SEAL]

NOTARY PUBLIC, STATE OF TEXAS

My Commission Expires:

